

NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

**Hilliard Development Corporation d/b/a Provident
Nursing Home and Service Employees Inter-
national Union, Local 285, AFL-CIO, CLC.**
Case 1-CA-35251

August 20, 1997

DECISION AND ORDER

**BY CHAIRMAN GOULD AND MEMBERS FOX AND
HIGGINS**

Pursuant to a charge and an amended charge filed on May 19 and 29, 1997, respectively, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on June 5, 1997, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish necessary and relevant information following the Union's certification in Case 1-RC-20057. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On July 7, 1997, the General Counsel filed a Motion for Summary Judgment. On July 9, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On July 30, 1997, the Respondent filed a response.

Ruling on Motion for Summary Judgment

In its answer and response, the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the certification on the basis of its contention in the representation proceeding that its district and charge nurses are statutory supervisors and should therefore be excluded from the unit.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no issues warranting a hearing with respect to the Union's request for information. The complaint alleges, and the Respondent's answer admits, that the Union requested the following information on April 30, 1997:

1. The name, home address, job classification, wage rate, date of hire, number of hours worked per week, shift and work location (floor or unit) for each employee in the bargaining unit.
2. Summary plan descriptions for all health insurance, dental insurance, life insurance, disability insurance and pension/retirement plans available to employees in the bargaining unit and the monthly cost to the employer and for each employee of the plans; and
3. Number of bargaining unit members participating in each of the insurance plans and retirement plans listed in 2 above and the breakdown of participation in the insurance plans by individual plan, family plan or other.¹

Although the Respondent's answer denies that this information is relevant and necessary to the Union's duties as the exclusive bargaining representative, it is well established that such information is presumptively relevant and must be furnished on request. See, e.g., *Maple View Manor, Inc.*, 320 NLRB 1149 (1996); *Trustees of the Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Boston, Massachusetts, has been engaged in the operation of a nursing home. Annually, the Respondent, in conducting its business operations, derives gross revenues in excess of \$100,000 and purchases and receives at its facility goods valued in excess of \$5000 directly from points outside the Commonwealth of Massachusetts. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

¹ The Union's letter requesting information also requested the employees' social security numbers, but the General Counsel does not allege that the Respondent was obligated to provide that information to the Union. See, e.g., *Sea-Jet Trucking Corp.*, 304 NLRB 67 (1991).

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held December 17, 1993, the Union was certified on April 2, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time, regular part-time, and per diem registered nurses, licensed practical nurses, graduate nurses, nursing assistants, certified nursing assistants/mental health aides, housekeepers, dietary aides, cooks, laundry employees, activity aides, and the secretary-receptionist employed by Respondent at its 1501 Commonwealth Avenue, Boston, Massachusetts location, but excluding all other employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

About April 30, 1997, the Union requested the Respondent to furnish necessary and relevant information, and, since about May 14, 1997, the Respondent has failed and refused to do so and to bargain with the Union. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after May 14, 1997, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested, necessary, and relevant information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested, with the exception of employee social security numbers.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962);

Lamar Hotel, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Hilliard Development Corporation d/b/a Provident Nursing Home, Boston, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Service Employees International Union, Local 285, AFL-CIO, CLC, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time, regular part-time, and per diem registered nurses, licensed practical nurses, graduate nurses, nursing assistants, certified nursing assistants/mental health aides, housekeepers, dietary aides, cooks, laundry employees, activity aides, and the secretary-receptionist employed by Respondent at its 1501 Commonwealth Avenue, Boston, Massachusetts location, but excluding all other employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

(b) Furnish the Union the information that it requested on April 30, 1997, with the exception of employee social security numbers.

(c) Within 14 days after service by the Region, post at its facility in Boston, Massachusetts, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 1 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 19, 1997.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 20, 1997

William B. Gould IV,	Chairman
----------------------	----------

Sarah M. Fox,	Member
---------------	--------

John E. Higgins, Jr.,	Member
-----------------------	--------

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Service Employees International Union, Local 285, AFL-CIO, CLC, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time, regular part-time, and per diem registered nurses, licensed practical nurses, graduate nurses, nursing assistants, certified nursing assistants/mental health aides, housekeepers, dietary aides, cooks, laundry employees, activity aides, and the secretary-receptionist employed by us at our 1501 Commonwealth Avenue, Boston, Massachusetts location, but excluding all other employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union the information that it requested on April 30, 1997, with the exception of employee social security numbers.

HILLIARD DEVELOPMENT CORPORATION
D/B/A PROVIDENT NURSING HOME